

DHF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DIANE LAMONICA,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,
Defendant.
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: 05 CV 1643 (ARR)

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: NOT FOR
: ELECTRONIC OR
: PRINT PUBLICATION

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: OPINION AND ORDER
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ROSS, United States District Judge:

Plaintiff Diane Lamonica brought this action pursuant to 42 U.S.C. § 405(g), requesting judicial review of the Commissioner of Social Security's adoption of the September 15, 2003 decision of Administrative Law Judge ("ALJ") Sol A. Wieselthier. ALJ Wieselthier found that plaintiff was disabled under the Social Security Act for a closed period from January 1, 1999 to May 1, 2002. R. 21. However, ALJ Wieselthier determined that, beginning on May 1, 2002, plaintiff retained the residual functional capacity to perform her past relevant work and therefore was not disabled after May 1, 2002. R. 10-21. On January 28, 2005, the Appeals Council denied plaintiff's request for review of the decision that she was not disabled after May 1, 2002. R. 4-6. The ALJ's decision therefore became the final decision of the Commissioner. Plaintiff initiated this action by complaint filed on March 28, 2005.

Defendant Commissioner of Social Security, acknowledging that the ALJ's decision is incomplete and that the ALJ committed legal errors in analyzing the evidence on record, moves to have this case remanded to the Social Security Administration for further administrative

proceedings pursuant to the fourth sentence of 42 U.S.C. §405(g). Specifically, the Commissioner acknowledges that the ALJ did not adequately assess plaintiff's credibility in dismissing her testimony regarding her continuing pain and did not sufficiently develop the record with respect to the demands of plaintiff's past relevant work. Plaintiff does not oppose the Commissioner's motion to remand.

Under the fourth sentence of 42 U.S.C. § 405(g), a "[c]ourt shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the case for a rehearing." 42 U.S.C. §405(g). A remand under the fourth sentence of 42 U.S.C. §405(g) is appropriate when the Commissioner did not make explicit findings, or correctly apply the law and regulations. Melkonyan v. Sullivan, 501 U.S. 89, 101 (1991).

After reviewing the record, this court agrees that further development and re-evaluation of the record is necessary. Accordingly, the Commissioner's unopposed motion for remand is granted.

The Clerk of the Court is directed to enter judgment accordingly.

SO ORDERED.

Allyne R. Ross
United States District Judge

Dated: February 13, 2006
Brooklyn, New York

SERVICE LIST:

Plaintiff:

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